THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 10

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLI MEYER and JOHANN ZSIFKOVITS

Appeal No. 1996-3828
Application No. 08/304,465[1]

ON BRIEF

Before CALVERT, Administrative Patent Judge, McCANDLISH, Senior Administrative Patent Judge, and NASE, Administrative Patent Judge.

NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 8 through 10, which are all of the claims pending in this application.

[1] Application for patent filed September 12, 1994.

We REVERSE.

BACKGROUND

The appellants' invention relates to a baffle mechanism. An understanding of the invention can be derived from a reading of exemplary claim 8, which appears in the appendix to the appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Rowe	3,934,998	Jan. 27, 1976
Irwin et al. (Irwin)	4,466,821	Aug. 21, 1984

Claims 8 through 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Irwin in view of Rowe.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the final rejection (Paper No. 6, mailed December 15, 1995) and the examiner's answer (Paper No. 8, mailed May 20, 1996) for the examiner's complete reasoning in support of the rejection, and to the appellants'

brief (Paper No. 7, filed March 8, 1996) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to claims 8 through 10. Accordingly, we will not sustain the examiner's rejection of claims 8 through 10 under 35 U.S.C.
§ 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of

obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. See In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is prima facie obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on

§ 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. See In

re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968).

With this as background, we analyze the prior art applied by the examiner in the rejection of the claims on appeal.

Irwin discloses a glassware forming machine. As shown in Figures 1-3, the glassware forming machine has a baffle support arm 17 which supports four individual baffle holders 18 and baffles 36 which are grouped in adjacent pairs. The baffle support arm 17 is provided with four vertical openings which extend therethrough within which baffle holders 18 are positioned. The two baffle holders 18, at each side of the center of the support arm 17, are engaged at their tops between the bifurcation thereof with an equalizer bar 21. The equalizer bars 21 are connected to the opposing ends of a large equalizing bar 22 by pivot pins 23. The larger equalizer bar 22 is pivoted at its center to a horizontal pivot 24. The pivot 24 carries a central bolt 25 extending axially thereof. The bifurcated upper end 26 of the vertical round shoulder bolt 27 (see Figure 4) extends downwardly

through a central opening formed in the baffle support arm 17. The lower end of the bolt 27 is provided with a lock nut 28. A pair of clamp bolts 8 serve to clamp the arm 17 to the bolt 27. As can best be seen in Figure 4, the shoulder bolt 27 extends through bushings in upper and lower portions 29 and 30, respectively, of the forward end of the arm 11 and is rotatable relative thereto.

As shown in Figures 2 and 3 of Irwin, the baffles 36 are in position closing the upper end of the mold and will serve to form the extreme upper end of the inverted parisons in the parison molds. The baffles 36 are mounted within lower, baffle lock rings 37 with a bayonet type configuration wherein the baffle 36 is turned 90° with respect to the position shown in Figure 2 when being inserted or removed from the lock ring 37. Each baffle 36 is provided along one edge thereof with a keyway 38 which is in vertical alignment with a keyway provided in each of the lock rings 37 and in a pressure plate 39 that is positioned between the upper end of the baffle and the lower inner lock ring 37 of the baffle holder 18. This pressure plate 39 is spring biased downwardly, as best

illustrated in Figure 2, by a compression spring 40. A baffle lock bar 41 extends down through the adjacent keyways formed in the baffles 36, the pressure plates 39, and the lower baffle lock rings 37, at points intermediate the two adjacent baffles at either end of the baffle arm 17. The lock bar 41 is spring biased downwardly by a spring 42 riding against a shoulder 43 of a vertical pin 44 that is guided in a bushing 45 and a vertical opening in the baffle support arm 17 intermediate the two adjacent baffle holders 18. The upper end of the pin 44 is provided with a finger gripping head 46 (see Figure 1). Thus, by grasping the head 46 the lock bar 41 may be elevated a sufficient amount such that the baffle 36 may be rotated through 90° and be removed from the baffle locking ring 37 when desired. Each baffle is held firmly within its lock ring by the downward force exerted by the spring 40 against the pressure plate 39 which bears against the upper surface of the baffle 36.

As best seen in Figures 1 and 3 of Irwin, the arm 17 is provided with a rearwardly extending boss 48 which serves as the pivot support for a vertical pin 49. The pin 49 extends

beyond the ends of the boss 48. The extending ends of the pin 49 serve as a pivot for a bifurcated, elongated arm 50. The arm 50 is formed in two pieces with the bifurcated piece being the end that is connected to the pin 49 with the opposite end of the arm 50 being connected to a vertical sleeve 51. The sleeve 51 is rotatably mounted with respect to a vertical shaft 52.

Rowe discloses a neck ring cartridge for a glassware machine. As shown in Figures 1-3, neck ring arms 12 and 14 of a Hartford I. S. type glassware forming machine section are adapted to be oscillated between a blank station 26 and a blow station 28, and also to move toward and away from one another in order to cooperate with one another and with a blank mold at the blank side of the machine, and to release a partially formed parison at the blow side of such a machine. In a triple gob configuration, where three such neck ring molds are provided, cartridges 36 and 38 are disclosed for conveniently mounting the six neck ring mold segments 30 and 32 for quick assembly with the associated neck ring arms. Rowe teaches (column 3, lines 51-59) that quick

disconnect attachment means in the form of latches and pins is provided for securing each of these cartridges 36 and 38 in position. The latches 50, 50 are pivotally provided on the outer end of each of the neck ring arms 12 and 14, with cooperating pins 52, 52 being provided at the outer ends of each of the cartridges 36 and 38 for receiving complimentary notches adjacent the free ends of the pivoted latches 50, 50.

The examiner determined (final rejection, p. 2 and answer, pp. 3-4) that the only difference[2] between Irwin and claim 8 is the limitation

> means for releasably securing said support arm to said support head with said support head and said support arm in selective alignment.

The appellant argues (brief, pp. 5-7) that in addition to the above-noted limitation Irwin also lacks the claimed "support arm," "support head," and "linkage means" as recited in claim 8. We do not agree. As pointed out by the examiner

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[2] After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

(answer, p. 3), the claimed "support arm" is readable on Irwin's baffle holder 18 and the claimed "support head" is readable on Irwin's support arm 17. In addition, we note that the claimed "linkage means" is readable on Irwin's arms 11 and 50 which are connected to Irwin's support arm 17 (i.e., the claimed support head) so that the support arm 17 can be displaced from a retracted position to an advanced position.

With regard to the above-noted difference between claim 8 and Irwin, the examiner determined (final rejection, pp. 2-3) that

> [i]t would have been obvious to a person skilled in the art at the time the invention was made to make the arm and baffle head separable since Rowe teaches in the abstract that separable 'cartridges' of the neck ring mold segments would have been desirable to minimize downtime of an I.S. machine section in the event that the segments would need to be replaced.

The appellant argues (brief, pp. 5-7) that the "means for releasably securing said support arm to said support head" limitation of claim 8 is not taught or suggested by the applied prior art. We agree. In our view, the only suggestion for modifying Irwin in the manner necessary to meet

the above-noted limitation stems from hindsight knowledge derived from the appellants' own disclosure.[3] In that regard, we see no suggestion in the applied prior art to have provided a means for releasably securing Irwin's baffle holder 18 (i.e., the claimed support arm) to his support arm 17 (i.e., the claimed support head). It follows that we cannot sustain the examiner's rejections of claims 8 through 10.

CONCLUSION

To summarize, the decision of the examiner to reject claims 8 through 10 under 35 U.S.C. § 103 is reversed.

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[3] The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

REVERSED

IAN A. CALVERT Administrative Patent Judge	)
HARRISON E. McCANDLISH SENIOR Administrative Patent Judge	) BOARD OF PATENT) APPEALS) AND) INTERFERENCES
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APPEAL NO. 1996-3828 - JUDGE NASE
APPLICATION NO. 08/304,465

APJ NASE

SAPJ McCANDLISH

APJ CALVERT

DECISION: **REVERSED**

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DRAFT TYPED: 22 Mar 99

FINAL TYPED: